# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee | UNPUBLISHED<br>August 6, 2013 |
| v | No. 309660<br>Wayne Circuit Court |
| MARQUEZ CHARLES THOMAS,<br><br>Defendant-Appellant. | LC No. 10-004162-FH |

Before: JANSEN, P.J., and CAVANAGH and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of possession of a firearm by a felon (felon-in-possession), MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a third habitual offender, MCL 769.11, to 1 ½ to 10 years in prison for the felon-in-possession conviction, and five years of probation for the CCW conviction. He was also sentenced to a consecutive term of two years in prison for the felony-firearm conviction. We affirm.

Police officers were dispatched to a gas station in Detroit to investigate a complaint that a man, who was armed with a gun, was arguing with a woman. When the officers arrived at the station, they observed a man and vehicle matching the descriptions given to them by the dispatcher. Defendant was initially pumping gas, but had re-entered his vehicle by the time the police officers approached him. While standing next to defendant's vehicle, an officer detected a strong odor of burnt marijuana. The officer knocked on the driver's side window to get defendant's attention. This startled defendant. He glanced at both officers and then began to reach into his jacket pocket. Thinking that defendant might be reaching for a gun, the officer opened the door and ordered defendant out of the vehicle. Once defendant stepped outside the vehicle, he attempted to flee. The officer grabbed defendant's coat collar, but defendant managed to wriggle out of the jacket and run away. As the second officer gave chase, the first officer searched the jacket and discovered a 0.38-caliber semiautomatic handgun. Defendant was apprehended a short distance away and placed under arrest.

On appeal, defendant first argues that the police officers did not have reasonable suspicion to search his jacket and vehicle, and that the stop was merely a pretext to search for

evidence of a crime, based on an alleged detection of a marijuana odor emanating from his vehicle. We disagree.

We review de novo a trial court's ultimate ruling with regard to a motion to suppress seized evidence, while its underlying findings of fact are reviewed for clear error. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003). A finding of fact is clearly erroneous if this Court "is left with a definite and firm conviction that a mistake has been made." *Id.* at 638.

Both the United States and Michigan Constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). "The lawfulness of a search or seizure depends on its reasonableness." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). "As a general rule, searches conducted without a warrant are per se unreasonable under the Fourth Amendment unless the police conduct falls under one of the established exceptions to the warrant requirement." *Id.* at 749. The Fourth Amendment permits the police to make a brief investigative stop, *Terry v Ohio*, 392 US 1, 21, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and detain a person without a warrant if the officer has a reasonable, articulable suspicion that the person is engaged in criminal activity, *People v Steele*, 292 Mich App 308, 314; 806 NW 2d 753 (2011).

> In determining reasonableness, the Court must consider whether the facts known to the officer at the time of the [investigatory] stop would warrant an officer of reasonable precaution to suspect criminal activity. The reasonableness of an officer's suspicion is determined case by case on the basis of the totality of all the facts and circumstances. . . . An officer's conclusion must be drawn from reasonable inferences based on the facts in light of his training and experience. [*Id.* at 314-315 (citations and quotation marks omitted).]

In this case, the police officers had reasonable suspicion to stop defendant's vehicle. At trial, following defendant's motion to suppress the handgun that was seized, an officer testified that he and his partner were dispatched to the gas station. They were told to look for a Silver Chevrolet truck or similar vehicle, as well as an individual described as a black male wearing a black cap, who had been arguing with a female, and who was armed with a gun. When the officers arrived at the gas station, they spotted a Silver truck and a black male wearing a black skull cap. The vehicle and the male matched the descriptions that the officers had received from the dispatcher.

We conclude that the information provided by the dispatcher gave the officers reasonable suspicion to stop and question defendant. *Steele*, 292 Mich App at 314. It was reasonable for the officers to infer from the dispatcher's description, which indicated that the male was arguing with a female and armed with a gun, that defendant was armed and may have been involved in a crime. Thus, the stop was constitutional.

Defendant also contends that the police officers did not have probable cause to search his vehicle and jacket because there was no evidence to establish that the officers were qualified to detect the odor of marijuana. This claim is without merit.

"Probable cause is traditionally determined on the basis of the totality of the circumstances." *Kazmierczak*, 461 Mich at 423 n 11. "Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of criminal activity." *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998).

The police officer testified that as he approached the window of defendant's vehicle he could smell a strong odor of burnt marijuana, even though the window was rolled up. The officer testified that he was able to identify the odor, having come across it often at traffic stops and in peoples' houses. Consequently, the officer testified, he was able and qualified to recognize the odor of marijuana. The officer's detection of a marijuana odor emanating from defendant's vehicle, standing alone, even without the existence of other factors indicating the presence of contraband, provided him with probable cause to conduct a search of defendant. *Kazmierczak*, 461 Mich at 423.

In addition, we note that when the officer knocked on the driver's side window of defendant's vehicle, defendant gave him a startled look and started reaching in his jacket pocket. At that moment, because of the nature of the radio call from the dispatcher, the officer reasonably could have believed that defendant was reaching for a gun. The officer opened the door and ordered defendant to step out of the car and show his hands. Defendant's furtive behavior, in combination with other factors, established probable cause to justify a search. See *People v Howell*, 394 Mich 445, 447; 231 NW2d 650 (1975).

Even more importantly, the evidence established that defendant abandoned his jacket and the handgun that was discovered inside the jacket pocket. As noted, after being ordered out of the vehicle and briefly detained, defendant attempted to flee. The officer testified that when defendant exited the car, he leaped over the gas pump, wriggled out of his jacket that the officer was clutching, and fled the scene. While one officer pursued defendant on foot, the other officer searched defendant's jacket and discovered the handgun in the pocket. Defendant's flight from the scene constituted abandonment of the jacket and gun. See *People v Zahn*, 234 Mich App 438, 448; 594 NW2d 120 (1999). A person does not have a reasonable expectation of privacy in property that he has abandoned. *People v Mamon*, 435 Mich 1, 6; 457 NW2d 623 (1990). Since defendant left his jacket behind, and the gun was found inside the jacket, he no longer had an expectation of privacy. As such, defendant has no standing to assert a Fourth Amendment challenge to the admissibility of the gun seized by the officers. *Zahn*, 234 Mich App at 448.

Defendant next argues that evidence was insufficient to support his convictions of felon-in-possession, CCW, and felony-firearm. We disagree.

We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). "'Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.'" *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation omitted). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The proofs established that the officers retrieved a handgun from the pocket of defendant's jacket, which defendant had abandoned after fleeing the scene. The jury could have reasonably concluded that there was an evidentiary link between defendant and the contents of his jacket and, thus, that defendant possessed a concealed firearm in violation of MCL 750.227.

Further, the evidence established that defendant was a felon in possession of a firearm in violation of MCL 750.224f. At trial, the prosecution offered into evidence a certified copy of defendant's prior conviction. Moreover, the defense stipulated that defendant was ineligible to possess a firearm at the time of the incident. The only question was whether defendant did, in fact, possess the handgun, either actually or constructively. As noted earlier, the prosecution presented sufficient evidence to permit the jury to find beyond a reasonable doubt that defendant possessed the handgun found in his jacket pocket. For the same reasons, there was sufficient evidence from which the jury could have found beyond a reasonable doubt that defendant possessed the firearm during the commission of a felony in violation of MCL 750.227b.

We conclude that the prosecution presented sufficient evidence to prove the elements of each charge beyond a reasonable doubt. It is for the trier of fact, not this Court, to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Jane E. Markey